

85th Legislative Session – 2010

Committee: Senate Judiciary

Thursday, January 28, 2010

P - Present
E - Excused
A - Absent

Roll Call

P Gillespie
P Heidepriem
P Schmidt
P Tieszen, Vice-Chair
P Turbak Berry
P Vehle
P Abdallah, Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Senator Gene G. Abdallah, Chair.

MOTION: TO APPROVE THE MINUTES OF THURSDAY, JANUARY 21, 2010

Moved by: Turbak Berry
Second by: Vehle
Action: Prevailed by voice vote.

SB 12: provide for a tiered sex offender registry and to establish certain criteria for eligibility to petition for removal or reassignment.

Proponents of Amendment 12rb:

Marty Jackley, Attorney General
Cheri Scharffenberg, SD Assn. Of Criminal Defense Lawyers

Answered questions:

John Strohman, Attorney General's Office

MOTION: AMEND SB 12

12rb

On the printed bill, delete everything after the enacting clause and insert:

" Section 1. That § 22-24B-19 be amended to read as follows:

22-24B-19. To be eligible for removal from the registry as a Tier I offender, the petitioner shall

show, by clear and convincing evidence, that all of the following criteria have been met:

- (1) At least ten years have elapsed since the date the petitioner first registered pursuant to this chapter. ~~For purposes of this subdivision, any period of time during which the petitioner was incarcerated or during which the petitioner was confined in a mental health facility does not count toward the ten-year calculation, regardless of whether such incarceration or confinement was for the sex offense requiring registration or for some other offense;~~
- (2) The crime requiring registration was for:
 - (a) Statutory rape under subdivision 22-22-1(5), or an attempt to commit statutory rape under subdivision 22-22-1(5), but only if the petitioner was twenty-one years of age or younger at the time the offense was committed or attempted;
 - (b) A juvenile adjudication for a sex crime as defined in § 22-24B-1(1), 22-24B-1(9), or 22-22-7.2; ~~or~~
 - (c) Sexual contact under § 22-22-7 if the victim was between the ages of thirteen and sixteen and the petitioner was at least three years older than the victim, but only if the petitioner was twenty-one years of age or younger at the time the offense was committed;
 - (d) Misdemeanor indecent exposure under § 22-24-1.2; or
 - (e) An out-of-state, federal or court martial offense that is comparable to the elements of the crimes listed in (a)-~~or~~, (b), (c), or (d);
- (3) The circumstances surrounding the crime requiring registration did not involve a child under the age of thirteen;
- (4) The petitioner is not a recidivist sex offender. ~~A recidivist sex offender is a person who has been convicted or adjudicated for more than one sex crime listed in subdivisions 22-24B-1(1) to (17), inclusive, regardless of when those convictions or adjudications occurred. For purposes of this subdivision, a conviction or adjudication includes a verdict or plea of guilty; a verdict or plea of guilty but mentally ill; a plea of nolo contendere; a suspended imposition of sentence granted under § 23A-27-13, regardless of whether it has been discharged; a deferred prosecution agreement entered by a prosecutor; and a determination made in another state, federal jurisdiction, or courts martial that is comparable to any of these events; and;~~
- (5) The petitioner has completely and truthfully complied with the registration and re-registration requirements imposed under chapter 22-24B; and

- (6) Petitioner demonstrates to the satisfaction of the court that he or she does not pose a risk or danger to the community.

For purposes of this section, any period of time during which the petitioner was incarcerated or during which the petitioner was confined in a mental health facility does not count toward the ten-year calculation, regardless of whether such incarceration or confinement was for the sex offense requiring registration or for some other offense.

Section 2. That chapter 22-24B be amended by adding thereto a NEW SECTION to read as follows:

To be eligible for removal from the registry as a Tier II offender, the petitioner shall show, by clear and convincing evidence, that all of the following criteria have been met:

- (1) At least twenty-five years have elapsed since the date the petitioner first registered pursuant to this chapter;
- (2) The crime requiring registration was for:
 - (a) Incest as defined in § 22-22A-2; or
 - (b) An out-of-state, federal or court martial offense that is comparable to the elements of incest as defined in § 22-22A-2;
- (3) The circumstances surrounding the crime requiring registration did not involve a child under the age of thirteen;
- (4) The petitioner is not a recidivist sex offender;
- (5) The petitioner has substantially complied in good faith with the registration and re-registration requirements imposed under chapter 22-24B; and
- (6) Petitioner demonstrates to the satisfaction of the court that he or she does not pose a risk or danger to the community.

For purposes of this section, any period of time during which the petitioner was incarcerated or during which the petitioner was confined in a mental health facility does not count toward the twenty-five year calculation, regardless of whether such incarceration or confinement was for the sex offense requiring registration or for some other offense.

Section 3. That chapter 22-24B be amended by adding thereto a NEW SECTION to read as follows:

Any person, who is on the sex offender registry and who is not eligible for removal pursuant to sections 1 and 2 of this Act, is a Tier III offender and is thus ineligible for removal from the registry for life.

Section 4. That chapter 22-24B be amended by adding thereto a NEW SECTION to read as follows:

A recidivist sex offender is a person who has been convicted or adjudicated for more than one sex crime listed in § 22-24B-1, regardless of when those convictions or adjudications occurred. For purposes of this section, a conviction or adjudication includes a verdict or plea of guilty; a verdict or plea of guilty but mentally ill; a plea of nolo contendere; a suspended imposition of sentence granted under § 23A-27-13, regardless of whether it has been discharged; a deferred prosecution agreement entered by a prosecutor; and a determination made in another state, federal jurisdiction, or courts martial that is comparable to any of these events.

Section 5. That § 22-24B-20 be amended to read as follows:

22-24B-20. If the court finds that all of the criteria described in § 22-24B-19 or in section 2 of this Act have been met and that the petitioner is not likely to offend again, then the court may, in its discretion, enter an order terminating the petitioner's obligation to register in this state and require the removal of petitioner's name from the registry. However, if the court finds that the offender has provided false, misleading, or incomplete information in support of the petition, or failed to serve the petition and supporting documentation upon the respondent, then the petition may be denied. If the petition is denied, the petitioner may not file a subsequent petition for at least two years from the date the previous petition was denied.

Section 6. That § 22-24B-17 be amended to read as follows:

22-24B-17. Any person required to register under this chapter who is eligible to seek removal from the registry as provided for in § 22-24B-19 or in section 2 of this Act may petition the circuit court in the county where the person resides for an order terminating the person's obligation to register. If the person seeking removal from the registry is not a resident of this state, but is required to register under other requirements of § 22-24B-2, then the person may petition the circuit court of any county of this state where the person is currently registered. The offender shall serve the petition and all supporting documentation on the state's attorney in the county where the offender is currently registered, the office of the prosecutor in the jurisdiction where the offense occurred, and the Attorney General. The Attorney General's office shall respond to each petition to request removal from the sex offender registry.

No person petitioning the court under this section for an order terminating the person's obligation to register is entitled to court appointed counsel, experts, or publicly funded witnesses."

Moved by: Tieszen
Second by: Vehle
Action: Prevailed by roll call vote. (7-0-0-0)

Voting Yes: Gillespie, Heidepriem, Schmidt, Tieszen, Turbak Berry, Vehle, Abdallah

Spoke to amendment: Roger Tellinghuisen, SD Trial Lawyers Association

THE CHAIR DEFERRED SB 12 UNTIL THURSDAY, FEBRUARY 4, 2010

SB 11: define solicitation of or conspiracy to commit certain crimes as registerable sex offenses.

MOTION: DO PASS SB 11

Moved by: Turbak Berry
Second by: Gillespie
Action: Prevailed by roll call vote. (7-0-0-0)

Voting Yes: Gillespie, Heidepriem, Schmidt, Tieszen, Turbak Berry, Vehle, Abdallah

SB 10: reduce the grace period for certain sex offender registry registrations.

MOTION: DO PASS SB 10

Moved by: Tieszen
Second by: Turbak Berry
Action: Prevailed by roll call vote. (7-0-0-0)

Voting Yes: Gillespie, Heidepriem, Schmidt, Tieszen, Turbak Berry, Vehle, Abdallah

SB 8: establish the application of certain statutes relating to the sex offender registry with regard to out-of-state offenders residing in the state of South Dakota.

Questions: Roger Tellinghuisen, SD Trial Lawyers Association

MOTION: DO PASS SB 8

Moved by: Gillespie
Second by: Vehle

Action: Prevailed by roll call vote. (7-0-0-0)

Voting Yes: Gillespie, Heidepriem, Schmidt, Tieszen, Turbak Berry, Vehle, Abdallah

SB 7: permit certain sex offenders who are homeless or on parole to reside in certain halfway homes or homeless shelters within community safety zones.

MOTION: DO PASS SB 7

Moved by: Tieszen

Second by: Turbak Berry

Action: Prevailed by roll call vote. (7-0-0-0)

Voting Yes: Gillespie, Heidepriem, Schmidt, Tieszen, Turbak Berry, Vehle, Abdallah

MOTION: ADJOURN

Moved by: Heidepriem

Second by: Tieszen

Action: Prevailed by voice vote.

Rena Ortbahn
Committee Secretary

Gene G. Abdallah, Chair